IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 2378 of 2005

AND

WRIT PETITION NO. 45 OF 2005

Between:

1. S.S.L.Narayana, s/o Sri S.V.Subrahmanyam,
   Office of Commissioner, Central Excise, Hyderabad-I Commissionerate,
   r/o Hyderabad.
2. Ch.Srinivas, s/o Sri Ch.Subba Rao,
   office of Commissioner, Central Excise, Hyderabad-IV Commissionerate,
   r/o Hyderabad.

..... PETITIONERS

AND

1 The Chairman, Central Board of Excise & Customs, New Delhi.
2 The Chief Commissioner of Customs & Central Excise, Hyderabad Zone,

Basheerbagh, Hyderabad.
3 The Commissioner of Central Excise, Hyderabad-III, Commissionerate,

Basheerbagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction(s) essentially in the nature of writ of mandamus

directing the respondents to promote the petitioners to the cadres of Tax Assistant and UDC from the cadres of UDC and LDC under the pre-restructured rules from the date of their eligibility and availability of vacancies with all consequential benefits by holding the decision of the respondents not to do so while extending the said benefit of promotion to all other cadres as bad, illegal, arbitrary, discriminatory and unconstitutional by setting aside the judgment dated 10-12-2004 rendered by Central Administrative Tribunal in O.A.No.1040 of 2003.

Counsel for the Petitioner:MR.J.SUDHEER

Counsel for the Respondents.: MR.KOTI REDDY IDAMAKANTI

WRIT PETITION NO : 45 of 2005

Between:

1. C. Giridhar Prasad, S/o C.L. Rao,
   R/o Gachibowli, Hyderabad.
2. B.S. Prasad, S/o B.S.K. Sastry,
   R/o Chikkadpally, Hyderabad.

..... PETITIONERS

AND

1 The Chairman, Central Board of Excise & Customs, New Delhi.
2 The Chief Commissioner of Customs & Central Excise, Hyderabad Zone,

Basheerbagh, Hyderabad.
3 The Commissioner of Central Excise, Hyderabad-III,Commissionerate,

Basheerbagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of certiorari or any other appropriate Writ, Order or Orders, Direction or Directions to quash the judgment of the Central Administrative Tribunal, Hyderabad Bench in O.A.No. 1040/2003 dated 10-12-2004 and to issue a consequential direction to the Respondents herein to promote the Petitioners to the posts of UDC and Tax Assistant (old) from the Cadre of LDC and UDC under the Pre-restructured Rules with all consequential benefits.

Counsel for the Petitioner:MR.V.SRINIVAS

Counsel for the Respondents: MR.I. KOTI REDDY

(S.C. FOR C.G.)

The Court made the following :

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COMMON ORDER: (Per the Hon'ble Sri Justice G. Bikshapathy)

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Both these petitions can be disposed of by a common order as the issue involved in both the writ petitions is one and the same.

2. The matter relates to the promotion of petitioners from L.D.Cadre to U.D. Cadre and from U.D. Cadre to Old Tax Assistants under the Pre-amended Rules, in the Central Excise Department.

3. It is the grievance of the petitioners that consequent on the publication of the Rules in the Gazette, restructuring of cadres came into force with effect from 5.5.2003. Therefore, any vacancies that arose prior to the commencement of new Rules have to be filled up under the Pre-amended Rules and the vacancies arising after 5-5-2003 have to be filled up by the new Rules. However, the case of the petitioners was rejected by the Tribunal.

4. An identical issue arose in respect of data entry operators in W.P.No. 7963 of 2004 and batch, wherein, it was held by a Division Bench of this Court by order

dated 2-3-2005 that in respect of the vacancies which arose prior to the commencement of new Rules, they shall be filled up under the old Rules.

5. Following the said decision, these writ petitions are allowed by setting aside the order of the Tribunal. However, it is made clear that promotions to the posts in the U.D.Cadre or Old Tax Assistant, as the case may be, shall be made in accordance with the old Rules in respect of the vacancies which arose prior to

5-5-2003. Pursuant to the orders of this Court, the authorities shall take action, in this regard, within a period of three months from the date of receipt of a copy of this order. No order as to costs.

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G.Bikshapathy, J.

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P.S.Narayana, J.

7th March, 2005.

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Monday the Seventh day of March Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chairman, Central Board of Excise & Customs, New Delhi.
2 The Chief Commissioner of Customs & Central Excise, Hyderabad Zone,

Basheerbagh, Hyderabad.
3 The Commissioner of Central Excise, Hyderabad-III, Commissionerate,

Basheerbagh, Hyderabad.

4. 2 CD copies

5. The Registrar, Central Administrative Tribunal, Hyderabad.

THE HONOURABLE SRI JUSTICE G.BIKSHAPATHY

AND

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P. 2378 OF 2005

AND

W.P. 45 OF 2005

7th March, 2005.